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COMPANIA MARITIMA,
Petitioner,

- versus - C.T.A. CASE No. 1426

ACTING COMMISSIONER OF
INTERNAL REVENUE,
Respondent.
x- - - - - - - - - - - - -x

Nov. 14/66

D E C I S I O N

This is an appeal from the decision of respondent assessing against and demanding upon petitioner the payment of deficiency percentage tax and surcharge as a common carrier in the sum of ₱13,279.94, computed as follows:

25% surcharge on ₱31,200.36 (2% tax on ₱1,560,018.23)	....	₱ 7,800.09
2% tax on ₱219,193.94	....	4,383.88
ADD: 25% surcharge	....	1,095.97
TOTAL AMOUNT DUE	....	₱ 13,279.94

Petitioner is a domestic corporation engaged in inter-island and inter-ocean transportation of passengers and cargoes by ship. In the examination of its books of account, papers and records conducted by respondent's agent, it was found, among others, that petitioner was regularly reporting and declaring for taxation, under Section 192 of the National Internal Revenue Code, its quarterly gross receipts (January to July, 1956) and monthly gross receipts (August, 1956 to June 30, 1960) from its shipping business; that in making said declarations, petitioner deducted from its gross receipts 10% thereof corresponding to an estimated reserve of the amount paid by customers on account of unshipped freights and returned passenger tickets; that the said reserve of 10% of the gross receipts amounted to ₱5,553,368.43; that after liquidation of the said reserve, the monthly balance was declared and returned for taxation in the following month after the due date of payment; and that the unliquidated balance of the 10% reserve of the gross receipts amounted to ₱1,560,018.23.

On the theory that the 2% common carrier's tax due on the said unliquidated balance, although subsequently paid by petitioner, was not paid on or before its due date, the investigating revenue agent recommended on November 28, 1960 the imposition and collection of the 25% surcharge as required by Section 183 of the National Internal Revenue Code which provides, among others, as follows:

> SEC. 183. Payment of percentage taxes - (a) In general. - xx xx xx
>
> If the percentage tax on any business is not paid within the time specified above, the amount of the tax shall be increased by twenty-five *per centum*, the increment to be a part of the tax.
>
> In case of willful neglect to file the return within the period prescribed herein, or in case a false or fraudulent return is willfully made, there shall be added to the tax or to the deficiency tax, in case any payment has been made on the basis of such return before the discovery of the falsity or fraud, a

> surcharge of fifty per centum of its amount.
> xx xx.

It was also found by the same investigating revenue agent that petitioner did not declare and return for taxation as part of its taxable gross receipts the total value of the documentary stamps it affixed to the bills of lading as required by Section 227 of the Tax Code. The cost of the said documentary stamps affixed to the bills of lading amounted to ₱219,193.34. On the theory that the total value of the documentary stamps affixed to the bills of lading forms part of petitioner's taxable gross receipts, the investigating revenue agent also recommended the imposition and collection of the 2% common carrier's tax on the said amount of ₱219,193.94, plus 25% surcharge thereon for late payment (Exhs. C and L, pp. 11-13, BIR rec.), pursuant to Section 192 of the National Internal Revenue Code which provides as follows:

> SEC. 192. Percentage tax on carriers and keepers of garages. - Keepers of garages, transportation contractors, persons who transport passengers or freight for hire, and common carriers by land, air, or water, xx xx shall pay a tax equivalent to two per centum of their monthly gross receipts. (As amended by sec. 8, Rep. Act No. 2025; underscoring supplied)

On May 23, 1963, based on the findings and recommendation of the investigating revenue agent, respondent assessed against and demanded upon petitioner the payment of ₱13,279.94, supra, plus ₱300.00 as suggested compromise in extrajudicial settlement of petitioner's penal liability under Section 209 of the Revenue Code. (Exh. 3, p. 34, BIR rec.). This letter-decision of respondent, from which the present appeal was filed with this Court, was received by petitioner on June 17, 1963. (t. s. n., p. 15).

In answer to the petition for review, respondent for the first time claimed that the common carrier's tax returns filed during the period covered by the assessment were false or fraudulent and they did not reflect the actual gross receipts of petitioner. On the theory that petitioner's returns were false or fraudulent, respondent seeks, in his answer to the petition for review, the collection not only of the deficiency percentage tax and 25% surcharge for delinquency in the payment thereof but also the 50% ad valorem penalty imposed by Section 183(a) of the Revenue Code, supra.

Under the foregoing facts and circumstances, the issues submitted to this Court for resolution are the following:

(1) Whether or not petitioner is subject to the 25% surcharge on the percentage tax due on the unliquidated balance of the 10% reserve;

(2) Whether or not the total value of the documentary stamps affixed to the bills of lading as required by Section 227 of the Tax Code forms part of

the taxable gross receipts of petitioner;

(3) Whether or not respondent's right to assess petitioner for deficiency percentage tax as a common carrier and the 25% surcharge for late payment thereof has prescribed under Section 331 of the Tax Code, in relation to Section 332 of the same Code; and

(4) Whether or not petitioner is subject to the 50% surcharge or ad valorem penalty for filing false or fraudulent returns as a common carrier.

As to the first issue, petitioner contends that it is not delinquent in the payment of the percentage tax due from it as a common carrier because the unliquidated reserve of 10% of the gross receipts of the preceding months was invariably included and declared for taxation for the succeeding months and the percentage tax due thereon were paid. This was done, it is alleged, to minimize errors and possible claims for refund had petitioner not ingeniously devised the method of creating a 10% reserve of its gross receipts.

The method adopted by the petitioner in deducting from its monthly gross receipts 10% thereof as a reserve for the cost of unshipped cargoes and returned passenger tickets is not sanctioned by Section 192 of the Tax Code. It is a cardinal rule in taxation that the matter of deduction from gross receipts, gross earnings or gross income of a taxpayer is an act of legislative grace. Where the law does not provide a deduction from a taxpayer's taxable gross receipts, he cannot do so without violating the provision of the law itself despite the plausible reason therefor. Moreover, if petitioner intended to minimize errors in declaring and returning its taxable gross receipts during the month and thereby avoid future claims for refund, the practical, easy and legal way to do is to make a true and complete return of the amount of its monthly gross receipts and within ten (10) /later 20/ days after the end of each month, pay the tax due thereon as required by Section 183(a) of the National Internal Revenue Code. Any excess payment of the percentage tax corresponding to any month can easily be adjusted by deducting from the gross receipts of the succeeding month the receipts from unshipped cargoes and returned passenger tickets. The procedure indicated above is not in reality an act of deduction but a simple adjustment in making a true and complete return of the taxpayer's monthly gross receipts.)

Admittedly, petitioner failed to declare and return for taxation the unliquidated reserves during the months they were received by the taxpayer. It follows, therefore, that petitioner failed to pay on time the percentage tax on the said unliquidated reserves. Consequently, petitioner is subject to the 25% surcharge imposed by Section 183(a) of the Tax Code, supra. And the imposition and collection thereof, under the facts and circumstances of this case, is mandatory. (Lim Co Chui vs. Posadas, 47 Phil. 460; Koppel vs. Collector, 87 Phil. 348; American Biscuit Co., Inc. vs. Collector, CTA Case No. 444, August 27, 1963.)

As to the second issue, petitioner contends that the total value of the documentary stamp affixed to the bills of lading does not form part of its taxable gross receipts under Section 192 of the National Internal Revenue Code, supra. In support of its contention, petitioner alleged that the costs of the documentary stamp are paid by the shippers and consignees of cargoes; that petitioner never treated this item as a part of its gross receipts as evidenced by the cargo manifests showing separate columns for the (1) cost of documentary stamp and the (2) cost of freight charged by petitioner; that petitioner only acted as an agent of respondent in collecting the cost of documentary stamp affixed to the bills of lading; and that the inclusion of the cost of documentary stamp in the taxable gross receipts of petitioner would result in double taxation.

On the other hand, respondent contends that the cost of the documentary stamp affixed to the bills of lading constitutes a part of the taxable gross receipts of petitioner. It is alleged that the words "gross receipts" found in Section 192 of the Tax Code mean the whole, entire, or total receipts of petitioner in the shipping business and that the cost of the documentary stamp paid by the shippers and consignees of cargoes to petitioner forms part of its taxable gross receipts. It is further alleged that petitioner is not an agent of respondent in collecting the cost of the documentary stamp and that the value thereof constitutes an expense of the petitioner.

We are in agreement with petitioner that the cost of documentary stamp affixed to the bills of lading does not form part of its taxable gross receipts. In the first place, the cost of the documentary stamp cannot be considered as an item of expense because the sum used for the payment of the said stamp is not taken from the funds of petitioner but from a portion of the total receipts earmarked for the cost of the documentary stamp. In the second place, the highest tribunal of the land interpreted the term "gross receipts" to mean all receipts of a taxpayer excluding those which have been especially earmarked by law or regulation for the government or some person other than the taxpayer. Thus, it was held:

> "xx xx. The Government could not have meant to tax as gross receipt of the Manila Jockey Club the ½% which it directs same Club to turn over to the Board of Races. The latter being a Government institution, there would be double taxation, which should be avoided unless the statute admits of no other interpretation. In the same manner, the Government could not have intended to consider as gross receipt the portion of the funds

> which it directed the Club to give, or know the Club would give, to winning horses and Jockeys - admitted 5%. It is true that the law says that out of the total wager funds 12½% shall be set aside as the 'commission' of the track owners but the law itself takes official notice, and virtually approves or directs payment of the portion that goes to owners of horses as prizes and bonuses of jockeys, which portion is admittedly 5% out of the 12½% commission. As it did not at that time contemplate the application of 'gross receipts' revenue principle, the law in making a distribution of the total wager funds, took no trouble of separating one item from the other; and for convenience, grouped three items under one common denomination.
>
> "Needless to say, gross receipts of the proprietor of the amusement place should not include any money which although delivered to the amusement place has been especially earmarked by law or regulation for some person other than the proprietor." (The Commissioner of Internal Revenue vs. Manila Jockey Club, Inc., G.R. Nos. L-13890 & L-13887, June 30, 1960)

It is to be noted that, under Section 260 of the Tax Code, a race-track is subject to an amusement tax of 20% of its gross receipts and "the term 'gross receipts' embraces all the receipts of the proprietor, lessee, or operator of the amusement place." Notwithstanding the broad and all-embracing definition of the term "gross receipts" found in our amusement tax law, our Supreme Court did not adopt a literal interpretation of the said term in the case of the Manila Jockey Club, Inc., <u>supra</u>.

Again, in the imposition of the 3% contractor's tax based on gross receipts as required by Section 191 of the Tax Code, our Supreme Court reiterated the doctrine enunciated by this Court in the Manila Jockey Club case, supra, when it ruled as follows:

> "xx xx. As the learned trial Court has aptly observed: 'x x x the government could not have intended to consider as gross receipts the 28% that went to one of its institutions, the Bureau of Customs, and thereby collect percentage tax on it from petitioner. To hold petitioner liable for the payment of percentage tax is unquestionably unjust and not contemplated by Section 191 of the Tax Code.'" (Visayan Cebu Terminal Co., Inc. vs. Commissioner of Internal Revenue, G.R. Nos. L-19530 & L-19444, February 27, 1965)

Accordingly, we hold that the total value of the documentary stamp affixed to the bills of lading, as required by Section 227 of the Tax Code, does not form part of the taxable gross receipts of petitioner.

As the third and fourth issues are interrelated, we deem it appropriate to dispose of them jointly. Petitioner contends that, even on the assumption that the tax assessment of respondent is based on valid and legal grounds, the right of respondent to assess petitioner before June, 1958 has prescribed under Section 331 of the Tax Code which provides as follows:

> SEC. 331. Period of limitation upon assessment and collection. - Except as provided in the succeeding section, internal revenue taxes shall be assessed within five years after the return was filed and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period. For the purpose of this section a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day: xx xx. (Underscoring supplied)

Respondent countered by alleging that his right to assess the deficiency percentage tax and surcharge covering the period from January, 1956 to June 30, 1960, inclusive, has not prescribed because petitioner is guilty of fraud when it underdeclared a substantial portion of its taxable gross receipts as a common carrier during the period in question. In support of his contention, respondent cited Section 332(a) of the Tax Code which provides that, in case a false or fraudulent return is filed with intent to evade the tax, the assessment may be made within ten years after the discovery of the falsity or fraud.

The question of fraud becomes moot and academic insofar as the cost of the documentary stamp affixed to the bills of lading is concerned because we have ruled that the said cost does not form part of the taxable gross receipts of petitioner as a common carrier. With respect to the unliquidated reserve of 10% of the gross receipt which was not declared for taxation on its due date, petitioner's failure does not constitute fraud with intent to evade the tax it appearing that the deductions of the said reserve from petitioner's gross receipts were resorted to because of the inaccuracy of the figures shown in the monthly passenger and cargo manifests. Moreover, assessment based on taxpayer's books of account, papers, records and documents, which are subject to inspection and examination at all times by revenue examiners and agents, preclude the imposition of the 50% surcharge as fraud penalty on the deficiency tax due. Thus, it was held:

> "xx xx. Moreover, it may be said that the amounts of said disallowed deductions for 1948, 1949 and 1950 were obtained by the revenue examiner from petitioner's books of accounts which are open to the inspection of tax authorities at all times. Hence, it cannot be said that there was a real attempt to hide these figures from the tax inspectors. Under the circumstances, we do not believe Bohol Company acted fraudulently with intent to evade the tax and, therefore, hold that the fraud penalty of 50% should not be imposed (Insular Lumber Co. vs. Collector, G. R. No. L-7190, April 28, 1956) as regards the deficiency income tax assessment for 1948 to 1950, inclusive." (Bohol Land Transportation Company vs. The Collector of Internal Revenue, C.T.A. Case No. 261, Sept. 25, 1957).

The same doctrine was reiterated by our Supreme Court in the case of Yutivo Sons Hardware Company vs. Court of Tax Appeals and Collector of Internal Revenue, G. R. No. L-13203, Jan. 28, 1961, wherein it was held, among others, as follows:

> "x x x, SM was organized and it operated, under circumstance that belied any intention to evade sales taxes. 'Tax evasion' is a term that connotes fraud thru the use of pretenses and forbidden devices to lessen or defeat taxes. The transactions between Yutivo and SM, however, have always been in the open, embodied in private and public documents, constantly subject to inspection by the tax authorities. x x x."

It is clear, therefore, that partial prescription has tolled against respondent.

The records show that on May 23, 1963 respondent assessed petitioner for deficiency percentage tax and 25% surcharge in the amount of ₱13,279.94 covering the period from January, 1956 to June 30, 1960. Respondent's letter-assessment was received by petitioner on June 17, 1963. Consequently, under Section 331 of the Tax Code, _supra_, petitioner can only be assessed for 25% surcharge, which is considered a part of the tax, in the amount of ₱4,117.29, computed as follows:

Gross receipts per books (June 1958 - June 1960)	₱38,941,654.17
Less: Amount declared for same period (Exh. 1-C)	35,392,280.50
Amount in 10% reserve (Exhibit 1-B)	₱ 3,549,373.67
Less: Liquidated reserve (7% of ₱38,941,654.17)	2,725,915.79
Balance reserve	₱ 823,457.88
2% tax due thereon under Sec. 192 of Tax Code	₱ 16,469.16
25% surcharge thereof due from petitioner	₱ 4,117.29

Finally, as to the amount of ₱300.00 suggested to be paid by petitioner in extrajudicial settlement of its penal liability under the National Internal Revenue Code, suffice it to say that the collection thereof without the consent of the taxpayer is illegal. (Collector of Internal Revenue vs. University of Sto. Tomas, G. R. Nos. L-11274 & L-11280, Nov. 28, 1958; Collector of Internal Revenue vs. Pedro Bautista, et al., G.R. Nos. L-18850 & L-12258, May 27, 1959).

WHEREFORE, the decision of respondent appealed from should be, as it is hereby, modified. Petitioner is hereby ordered to pay respondent or his duly authorized collection agent the sum of ₱4,117.29. Without pronouncement as to costs.

SO ORDERED.

Quezon City, November 14, 1966.

Estanislao R. Alvarez
ESTANISLAO R. ALVAREZ
Associate Judge

WE CONCUR:

R. M. Umali
ROMAN M. UMALI
Presiding Judge

Ramon L. Avanceña
RAMON L. AVANCEÑA
Associate Judge